

- a) styrenic thermoplastic elastomers;  
If this Species is elected, then please also elect either a butadiene containing thermoplastic elastomer or an isoprene containing thermoplastic elastomer.
- b) olefinic thermoplastic elastomers; or
- c) urethanic thermoplastic elastomers.

In addition, the Examiner is requiring the election of a single Species of modified polyolefinic resins as follows:

- a) isotactic polypropylene;
- b) propylene/ethylene copolymers; or
- c) propylene/4-methyl 1-pentene copolymers.

For the elected modified polyolefinic resin, please also elect an ultimate, single disclosed Species. For example, you may wish to elect a polyolefinic resin from those listed on page 36, lines 18-25.

Finally, the Examiner is requiring the election of a single Species of modifying material for modifying the modified polyolefinic resins as follows:

- a) unsaturated esters;
- b) unsaturated anhydrides; or
- c) acrylic acids.

In response to the Official Action dated August 22, 2002, Applicants elect, with traverse, Group I, Claims 1-21. In addition, Applicants elect, with traverse, thermoplastic elastomer Species (a) and isoprene containing thermoplastic elastomers, modified polyolefinic resin Species (a), modifying material for modifying the modified polyolefinic resins Species (b), and polypropylene as an ultimate, single disclosed Species of polyolefinic resins Species (b). Claims 1-36 are believed to read on the elected species.

Applicants note that the claims of Group II depend directly from the claims of Group I, and as such can not be separated.

The Office has characterized the inventions of Groups I and II as related as process of making and product made. Citing MPEP §806.05(f), the Office concludes that the process as claimed can be used to make a materially different product such as "a product not requiring the specific thermoplastic elastomers of the Group I claims." However, the claims of Group II depend directly from the claims of Group I, and as such the products of Group I *are* made by the process of Group II. Moreover, there is no evidence of record to show that the claimed process can be used to make a product as the Office has alleged. If in fact the claimed process can be used to make the alleged products, Applicants respectfully submit that the Office has not shown any product, much less establish that this product is materially different from the claimed product. Accordingly, Applicants respectfully request withdrawal of the Restriction Requirement.

Applicants traverse the Restriction Requirement on the additional grounds that the Office has not shown that a burden exists in searching all the claims of the present application.

Moreover, the MPEP in §803 states as follows:

"If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."

Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office.

Applicants respectfully traverse the Election of Species Requirement on the grounds that the Office has not provided any reasons, whatsoever, to support the conclusion of patentable distinctness. Rather, the Office has merely stated the conclusion.

Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be a patentable difference between the species as claimed. MPEP §808.01(a). The Office has not provided any reasons or examples to support a conclusion that the species are indeed patentably distinct. Accordingly, Applicants respectfully submit that the restriction is improper, and Applicants' election of species is for examination purposes only.

Finally, with respect to the elected species, Applicants respectfully submit that, should the elected species be found allowable, the Office should expand its search to the non-elected species.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Restriction and Election of Species Requirement. Withdrawal of the Restriction and Election of Species Requirement is respectfully requested.

Additionally, MPEP §821.04 states:

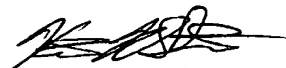
...if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined.

Applicants respectfully submit that should the elected group be found allowable, non-elected process claims should be rejoined.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



---

Norman F. Oblon  
Attorney of Record  
Registration No.: 24,618

Vincent K. Shier, Ph.D.  
Registration No.: 50,552

PHONE NO.: (703) 413-3000  
FAX NO.: (703) 413-2220  
NFO:VKS  
D:\203162US0-RE Resp.wpd



**22850**